



DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 212S180110; S2D2S SS08011000 SX064A000 21XS501520]

Loss of State Jurisdiction to Administer the Surface Mining Control And Reclamation Act of 1977 within the Exterior Boundaries of the Muscogee (Creek) Nation Reservation in the State of Oklahoma

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of decision.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are notifying the public that the recent decision of the United States Supreme Court in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), which legally recognized the ongoing existence of the historic Muscogee (Creek) Nation Reservation in the State of Oklahoma, necessarily forecloses the State of Oklahoma's authority to implement the Surface Mining Control and Reclamation Act of 1977 (SMCRA) on Indian Lands within the exterior boundaries of the Muscogee (Creek) Nation Reservation. SMCRA designates OSMRE as the regulatory authority over surface coal mining and reclamation operations on Indian lands where a tribe has not obtained primacy. OSMRE has thus determined that Oklahoma cannot exercise its State program regulatory authority over surface coal mining and reclamation operations within the exterior boundaries of the Muscogee (Creek) Nation Reservation. Accordingly, for lands within the exterior

boundaries of the Muscogee (Creek) Nation Reservation, OSMRE is assuming jurisdiction over the SMCRA Title IV reclamation and Title V regulatory programs. The Muscogee (Creek) Nation Reservation consists of lands, wholly or partially within the following counties: Creek, Hughes, Seminole, McIntosh, Muskogee, Okfuskee, Okmulgee, Tulsa, Rogers, Mayes, and Wagoner.

DATES: As of April 2, 2021, OSMRE initiated transfer of SMCRA Title IV and Title V program responsibilities within the exterior boundaries of the Muscogee (Creek) Nation Reservation.

FOR FURTHER INFORMATION CONTACT: Alfred L. Clayborne, Regional Director, Office of Surface Mining Reclamation and Enforcement, 501 Bell St., Suite 216, Alton, IL 62002; Telephone (618) 463–6463 Ext. 5101.

SUPPLEMENTARY INFORMATION: On April 2, 2021, OSMRE sent letters to the Oklahoma Conservation Commission (OCC) and the Oklahoma Department of Mines (ODM) to initiate transfer of the SMCRA Title IV and Title V program responsibilities within the exterior boundaries of the Muscogee (Creek) Nation Reservation. Thus, beginning a coordination period that will allow for the orderly transfer of all OCC and ODM records, documents, data, and other information associated with the regulation of activities under SMCRA within the exterior boundaries of the Muscogee (Creek) Nation Reservation. During the transition period, both the OCC and ODM will, to the extent permitted by applicable law, maintain routine reclamation and regulatory program activities, including by responding to any Abandoned Mine Land (AML) emergencies within the exterior boundaries of the Muscogee (Creek) Nation Reservation. OSMRE does not consider any action with irreversible or irreparable consequences, such as the approval of permitting actions or the release of bonds or other obligations under SMCRA, to be a routine reclamation and regulatory program activity, and, during the transition

period, OCC and ODM should not take any such actions with respect to lands within the boundaries of the Muscogee (Creek) Nation Reservation.

Pursuant to SMCRA, States may acquire the primary responsibility (i.e., primacy) for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within the State. To obtain primacy, a State must develop a regulatory program that meets the minimum standards set forth in SMCRA and the Federal regulations, as approved by the Secretary of the Interior. SMCRA, however, does not allow for the delegation of this authority to a State to regulate surface coal mining operations on Indian lands within the State's boundaries. Unless a Tribe obtains primacy, SMCRA designates OSMRE as the sole regulatory authority over surface coal mining and reclamation operations on Indian lands. 30 U.S.C. 1300. As indicated, SMCRA defines "Indian lands" as: "all lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe." 30 U.S.C. 1291(9).

Potential Implications of Substitution of Federal Authority

SMCRA established the Abandoned Mine Reclamation Fund to receive reclamation fees that, along with funds from other sources, are used to finance reclamation of abandoned coal mine sites. Title IV of SMCRA authorizes OSMRE to provide grants to eligible States and Tribes that are funded from permanent (mandatory) appropriations. Recipients use these funds: to reclaim the highest priority AML coal mine sites that were left abandoned prior to the enactment of SMCRA in 1977; to reclaim eligible non-coal sites; for projects that address the impacts of mineral development; and for eligible non-reclamation projects.

Title V of SMCRA authorizes OSMRE to provide grants to States and Tribes to develop, administer, and enforce State and Tribal regulatory programs that address, among other things, the disturbances from coal mining operations. Additionally, upon approval of a State or Tribal regulatory program, Title V authorizes a State or Tribe to assume regulatory primacy and act as the regulatory authority within the State or Tribe, and to administer and enforce its approved SMCRA regulatory program. The regulations at title 30 of the Code of Federal Regulations, Chapter VII, implement these provisions of SMCRA.

Glenda H. Owens, Deputy Director,

Office of Surface Mining Reclamation and Enforcement.

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